



Southeast Fishery Bulletin

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REVISED PROPOSED RULE TO ESTABLISH GULF OF MEXICO RED SNAPPER INDIVIDUAL FISHING QUOTA (IFQ) REFERENDUM PROCEDURES AND VOTE WEIGHTING FORMULA

The National Marine Fisheries Service (NOAA Fisheries) has filed a revised proposed rule to establish referendum procedures and vote weighting formula for the Gulf of Mexico (Gulf) Red Snapper Individual Fishing Quota (IFQ) Program. It was published in the Federal Register on December 30, 2003, for public review and comment; comments were requested through January 20, 2004. This revised proposed rule provides potential participants with additional information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether or not an IFQ program for the Gulf commercial red snapper fishery should be prepared, and if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. This proposed rule revises a previously published proposed rule (68 FR 61178, October 27, 2003) based on comments that were received on that rule. In response to those public comments, this revised proposed rule includes additional options regarding the procedure for weighting votes by eligible participants. NOAA Fisheries is soliciting additional public comment on this proposed rule and, particularly, comments on the vote-weighting options. The intended effect of this revised proposed rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Referendum Processes

Establishment of a red snapper IFQ program is a two-tiered process requiring that separate referendums be conducted by NOAA Fisheries. In the first referendum, fishermen qualified to vote will be asked to decide whether an IFQ program should be prepared. NOAA Fisheries will present the results of the first referendum to the Gulf of Mexico Fishery Management Council (Council), and, at that time, the Council may elect to proceed with development of an IFQ plan amendment (assuming a majority vote "yes" for the first referendum). After preparation of an IFQ plan amendment, the Council may vote to submit the plan amendment to the Secretary, pending approval by those voting in the second referendum. In the second referendum, fishermen qualified to vote will be asked to decide whether the alternatives proposed in the IFQ plan amendment are

acceptable and may be submitted to the Secretary for review. It should be noted, however, that even if both referendums pass, the Secretary is not mandated to enact an IFQ program.

Who Would Be Eligible to Vote in the Referendums

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. After careful consideration of those criteria, NOAA Fisheries has determined that the following persons would be eligible to vote in the referendums.

For the initial referendum:

(A) A person who according to NOAA Fisheries' permit records has continuously held their Gulf of Mexico red snapper endorsement/Class 1 license from September 1, 1996, through the date of publication in the Federal Register of the final rule implementing these referendum procedures;

(B) in the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NOAA Fisheries' permit records holds such Class 1 license as of the date of publication in the Federal Register of the final rule implementing these referendum procedures;

(C) in the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the Federal Register of the final rule implementing these referendum procedures, as determined by NOAA Fisheries' permit records; and

(D) a vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season between January 1, 1993, and September 1, 1996.

Eligibility criteria for the second referendum are identical to that established for the first referendum except for the date of publication in the Federal Register of the final rule implementing those procedures. This date will be announced in a future Southeast Fisheries Bulletin if the first referendum passes by a majority "yes" vote by eligible voters and the Council then elects to proceed with

development of an IFQ plan amendment.

Additional Alternatives for a Vote-Weighting Formula

Public comment received on the original proposed rule expressed concern about the vote-weighting procedure, and specifically objected to allowing both a qualified lessor and qualified lessee fully weighted votes, resulting in double counting. In response to those public comments, NOAA Fisheries has revised the proposed rule to include a broader range of potential options for vote weighting.

NOAA Fisheries evaluated several additional alternatives for a vote weighting formula for the IFQ referendum. In addition to the one vote per-participant-per-pound approach specified in the initial proposed rule (68 FR 61178, October 27, 2003), each alternative below is based on varying the vote-per-qualifying-pound weighting by specified eligible voting class based on their respective involvement in the fishery. The following alternatives are not necessarily mutually exclusive and were considered individually and in combinations. For the purpose of these alternatives, the term “license” refers to a Class I license and/or endorsement, consistent with the context of § 407(c) (2) of the Magnuson-Stevens Act.

(1) Allocating one half (or some other fraction) of a vote per qualifying pound to the qualifying historical vessel captain;

(2) Allocating one half (or some other fraction) of a vote per qualifying pound to both the lessor and lessee license holders to avoid double counting of the associated poundage;

(3) Allocating one vote per qualifying pound of landings to both lessors and lessees, while allocating two votes per qualifying pound to license holders who are not involved in lease arrangements with their license;

(4) Votes could be weighted based on an individual’s level of participation in the fishery, measured by length of time they held a license. This could be applied to all license holders, or some portion thereof, such as only lessors and lessees, and would prorate the respective weight of a vote based on the number of years of participation in the fishery. For example, using the 3-year time period established for historical captain eligibility, a participant could be awarded one vote per qualifying pound if they held a license for 3 or more years, two thirds of a vote per qualifying pound if they held a license for less than 3 but at least 2 years, and one third of a vote per qualifying pound if they held it less than 2 years; and

(5) The total allowable weighted votes allocated to participants in each referendum could be capped by the total number of pounds harvested, which would eliminate all multiple counting of poundage. Then all participants with eligibility tied to a particular license would have their vote weighted at a ratio equal to all other participants associated with that license, so that their combined vote would be equal to one vote per pound of landings associated with that license. For example, if a historical captain is eligible based

on his landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same historical captain, then each would get one half of a vote per pound of landings associated with the license.

How Would Votes be Weighted

NOAA Fisheries will obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from the NOAA Fisheries’ Southeast Regional Office permit database will be used to assign total applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain). To address confidentiality concerns, NOAA Fisheries will establish a series of categories (ranges) of red snapper landings based on 5,000-pound intervals (e.g., 0-5000 pounds; 5,001-10,000 pounds, etc.) concluding with the interval that includes the highest documented landings. The total landings attributed to each eligible voter during the period January 1, 1993, and September 1, 1996, would be assigned to the appropriate category. The overall landings assigned to each category would be determined. That average number of pounds would be the vote-weighting factor, i.e., one vote for each such pound, for each eligible voter whose landings fall within that category. For example, if the overall average number of pounds attributed to the 5,001-10,000-pound category is 8,150 pounds, each eligible voter within that category will receive 8,150 votes.

How Would the Vote Be Conducted

On or about January 23, 2004, NOAA Fisheries will mail each eligible voter a ballot that would specify the number of votes (weighting) that the voter is assigned. NOAA Fisheries will mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NOAA Fisheries’ permit database for red snapper endorsement/Class 1 license holders and, for vessel captains, to the address provided by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to the eligible voters must be cast for the same decision, i.e., either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N, St. Petersburg, Florida, 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, February 27, 2004; ballots received after that deadline will not be considered in determining the outcome of the initial referendum. Although not required, voters may want to consider submitting their ballots by registered mail.

How Would the Outcome of the Referendums Be Determined

Vote counting will be conducted by NOAA Fisheries. Approval or disapproval will be determined by a majority of

the votes cast. NOAA Fisheries will prepare a fisheries bulletin announcing the results of each referendum that is conducted and will distribute the bulletin to all Gulf reef fish permittees, including dealers, and to other interested parties. The results will also be posted on NOAA Fisheries Southeast Regional Office's Web site at <http://caldera.sero.nmfs.gov>

What Would Happen After the Initial Referendum

NOAA Fisheries would present the results of the initial referendum at the March 8-11, 2004, Council meeting in Mobile, Alabama. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with the development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking process that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan

amendment and regulations. The plan amendment and regulations would only be submitted to the Secretary for review and approval or disapproval if in a second referendum approval of the submission was passed by a majority of the votes cast by the eligible voters as described in this proposed rule.

Written comments on the revised proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, Florida, 33702, and must be received no later than 5:00 p.m., eastern time, on January 20, 2004. Comments also may be sent via fax to Phil Steele at 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet. Copies of supporting documentation for this proposed rule, which includes a Regulatory Impact Review and a Regulatory Flexibility Act Analysis, are available from NOAA Fisheries' Southeast Regional Office at the address above.

NOAA Fisheries is an agency of the Commerce Department's National Oceanic and Atmospheric Administration.